

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 15th December, 2020.**

+ **W.P.(C) 5759/2019, CM Nos.36201/2019 (of petitioner for ad-interim ex parte direction(s) & 24616/2020 (of respondent No. 1 for condonation of delay for filing the additional counter affidavit)**

CPL MUKESH SINGH RAJPOOT

..... Petitioner

Through: Mr. Ankur Chhibber, Ms. Nandadevi
Deka & Mr. Anshuman, Advs.

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: Ms. Kaadambari, Standing Counsel
with Ms. Mansi Sinha, Advocate for
R-1 to R-3.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MS. JUSTICE ASHA MENON

[VIA VIDEO CONFERENCING]

RAJIV SAHAI ENDLAW, J.

1. The petitioner, a Corporal with the respondents Indian Air Force (IAF), has filed this petition (i) impugning Clause 6 of the Air Force Order (AFO) No.33/2017, as arbitrary, illegal and unconstitutional; and, (ii) seeking mandamus, directing the respondents no.1 to 3 IAF to issue No Objection Certificate (NOC) to the petitioner, with immediate effect, in view of the petitioner having been selected to the post of Assistant Manager, Scale-I in respondent no.4 Gramin Bank of Aryavart.

2. The petition came up before this Court first on 24th May, 2019, when notice thereof was ordered to be issued and counter affidavit directed to be

filed, also explaining the rationale behind the Policy framed by the respondents IAF vide AFO No.33/2017, particularly in relation to the laying down of the eligibility criteria for the Airmen and Non-Combatants (Enrolled) [NC(E)] for grant of NOC for release from the IAF for joining civil posts. Thereafter, on 13th September, 2019, an official from the respondent no.4 Gramin Bank of Aryavart appeared before the Court and stated that the respondent no.4 Bank was willing to extend the time for the petitioner to join, up to 31st October, 2019. On 24th October, 2019, the petitioner stated that without prejudice to his contentions, the petitioner will apply in terms of Air Force Instruction No.1 dated 2nd September, 2019, seeking discharge on the ground of medical unfitness and vide order of 24th October, 2019, it was directed that the said application, if made by the petitioner be considered within four weeks and decision thereon be communicated to the petitioner. On 18th December, 2019, the counsel for the respondents IAF informed that vide order dated 17th December, 2019, the request of the petitioner for being discharged on the ground of medical unfitness, had been rejected. Thereafter the petitioner amended the petition, to also challenge the said order.

3. Pleadings have been completed.

4. It is the case of the petitioner (in the amended writ petition), that (i) the petitioner, on 1st October, 2008, was enrolled with the respondents IAF in the trade of Electrical Fitter; (ii) after serving for 5 years, the petitioner, in the year 2013 was promoted to the post of Corporal; (iii) at the time the petitioner joined the respondents IAF, AFO No.14/2008 and AFO No.16/2008 were in force; AFO No.14/2008 provided for permission to

Airmen to apply for civil posts/services under Central/State Government and Public Sector Undertakings (PSUs) in Group A or equivalent posts, on completion of 7 years of service; AFO No.16/2008 allowed Airmen to seek discharge for the above posts on compassionate grounds; (iv) the petitioner, during his service with the respondents IAF, was diagnosed with a peculiar form of Asthma, which rendered the petitioner unfit to the trade he was employed at, which involved frequent/persistent exposure to dust, cold and smoke; (v) as per the medical examination in the year 2012, the petitioner was declared to be suffering from medical condition A4 G3(P) and in 2014 the Medical Board which examined the petitioner recommended that the petitioner was severely unfit for High Altitude and to avoid exposure to dust, cold and smoke; (vi) this rendered the petitioner unfit to undertake tasks involving dust/fumes/batteries/generators, that are peculiar to all types of activities of the petitioner in the respondents IAF; (vii) in the medical examination of 29th March, 2019, the petitioner has been determined to be unfit for High Altitude and Dusty Areas; (viii) on 31st May, 2012, AFO No.4/2012 was notified with respect to career enhancement opportunities for Airmen in civil services; as per Clause 6 of the said AFO, an Airman who completed 7 years of regular service would be eligible for seeking permission for applying for Group A posts in Central/State Government and equivalent posts in PSUs and Government of India Undertakings/Corporations; Clause 6 further laid down the eligibility criteria to apply for civil post/services under Central/State Governments including PSUs, Government of India Undertaking/Corporations, viz. of having completed 7 years regular service; (ix) despite the subsisting validity of AFO No.4/2012, the respondents IAF, prematurely and arbitrarily, issued

AFO No.33/2017, nullifying the earlier AFOs with respect to the procedure for discharge from Indian Air Force and drastically changed the scenario for Airmen seeking better career opportunities; the said AFO imposed additional conditions on the eligibility criteria for applying for a civil post under State and Central Government and which is grossly arbitrary and *mala fide*; (x) the petitioner, on account of his medical condition, financial hardship, and to pursue better career prospects, applied for the post of Assistant Manager, a Group A post in a Regional Rural Bank, in pursuance to an Advertisement dated 6th June, 2018 issued by the Institute of Banking Personnel Selection (IBPS); (xi) the petitioner, as per norms, sought permission of the respondents IAF, by filling online application form for applying for the aforesaid post and thereafter applied for the said post; (xii) however due to the additional condition of acquiring Skill Grade A by every desired candidate and restricted categories of civil post that can be applied to as per AFO No.33/2017, the petitioner's online application was not processed; (xiii) the petitioner appeared for the preliminary examination in pursuance to the Advertisement dated 6th June, 2018 and after succeeding therein, appeared for the main examination and after succeeding therein appeared for the interview and was issued a letter, notifying that the petitioner had been allotted Gramin Bank, Aryavart, Uttar Pradesh; (xiv) on being selected in the aforesaid post of Assistant Manager, Group A Officer, Gramin Bank, the petitioner sought NOC from the respondents IAF, also citing his medical condition that forbids him from undertaking activities for which he was employed with the respondents IAF; and, (xv) the respondents IAF vide letter dated January, 2019 rejected the application for NOC by the petitioner in terms of AFO No.33/2017.

5. The respondents IAF, in their counter affidavits, both unamended and amended petitions, have pleaded that (i) after the enactment of the Armed Forces Tribunal Act, 2007, the petitioner, if aggrieved from the decision of any authority of the Armed Forces on Service Matters, is required to approach the Armed Forces Tribunal (AFT) and the jurisdiction of this Court to entertain the writ petition is barred; (ii) the petitioner, in the petition as originally filed, had not invoked the main ground and has in the amended petition set up a entirely new case; (iii) many Airmen are capable of clearing civil services exams conducted by the Union Public Service Commission (UPSC)/State Public Service Commission(SPSC)/Banking Sector, GATE, NET (UGC) and other national level exams; however they are not upgrading their skill level as Airmen, leading to their imperfection in the trade for which they have been trained by the respondents IAF; (iv) the Airmen were found to be not taking interest in upgrading their skill level and concentrating for civil job with full dedication; (v) the petitioner has been using his time in the respondents IAF, to only focus on clearing examinations conducted by the PSUs and other private organisations; (vi) the petitioner approached the respondents IAF for NOC, only after being selected to the post of Assistant Manager in Regional Rural Bank and did not approach any authority at any earlier occasion, as he was required to do; (vii) even if the petitioner had made an application earlier, it would have been declined owing to the petitioner not meeting the eligibility criteria; (viii) the civil posts of banks are not existing in Para 6 of AFO No.33/2017; the petitioner thus, in any case is not entitled to permission; (ix) the petitioner has neither upgraded his skill nor is inclined to do so despite the heavy expenditure of the State in training him, after he was inducted with

10+2 education; (x) AFO No.16/2008 deals only with discharge from service on compassionate grounds – it is not necessary for the Competent Authority to approve every case; (xi) the request of the petitioner for being discharged from service was rightly rejected; (xii) none of the AFOs issued, vest any right of discharge in the Airmen; (xiii) discharge of the petitioner on medical grounds has not been recommended; (xiv) relieving of Airmen cannot only be seen through the parlance of loss of exchequer to the Government but is also to be seen in terms of time and manpower engaged, to mould the new entrants to the form of a soldier and develop the patriotic spirit as well as make an asset for the service and nation; (xv) an expenditure of Rs. 22,35,140/- is incurred in the training, which the petitioner was made to undertake, to make an efficient Airman; (xvi) further, Airmen are designated with the trade and trained accordingly for a specific job which will be performed by them, not by anyone else; each and every Airman is important in his own trade specific for the service; (xvii) the petitioner, at the time of joining, has signed a bond for 20 years, whereafter he would be permitted for discharge from service on fulfilling regular terms and conditions of service; (xviii) as per Rule 13 of the Air Force Rules, 1969, provision is made for premature discharge of an Airman owing to relevant orders and instructions passed from time to time; (xix) Supreme Court, in **Corporal Amit Kumar Roy Vs. Union of India** (2019) 7 SCC 369 has held that a person who has been enrolled as a member of Air Force does not have any unqualified right to depart from service at his or her will, during the term of engagement; (xx) in **Union of India Vs. R.P. Yadav** (2000) 5 SCC 325, it was held that there is no right to be released from the force and to vest a right in a member of the force, in that case the

Indian Navy, to walk out from the service at any point to time according to sweet will, is a concept abhorrent to the high standard of discipline expected of members of Defence Services; (xxi) the members of the Defence Services have the proud privilege of being entrusted with the task of security of the Nation and which privilege comes only to selected persons who have succeeded in entering the service and have maintained high standards of efficiency; (xxii) promotions to the rank of Corporals and Sergeants are time scale, irrespective of medical category; even otherwise Medical Category A4G1 and A4G3, temporary or permanent, for select ranks i.e. Junior Warrant Officer, Warrant Officer, Master Warrant Officer are promotable categories through Condonation Board – thus the contention of the petitioner that he is not having a career in the Air Force for the reason of being of a Low Category A4G3, is not tenable; (xxiii) statics show that 14807 Air Warriors are placed under Medical Category A4G3 (T/P) in the Air Force, making it apparent that inspite of a considerable number of Airmen placed in Low Medical Category they continue their trade jobs; (xxiv) Air Force cannot afford to lose, trained manpower with lot of investment, posing difficulty on any trivial medical issues; (xxv) if trained and experienced manpower is relieved, it would pose serious difficulty for administration and to manage the affairs of the service; and, (xxvi) Air Force is a technology oriented force and if one of the Air Warriors is released for any job which suits him, it will set wrong precedent, encouraging others also to lead.

6. Though the petitioner has filed rejoinders to the aforesaid affidavits but since arguments hereunder are noted in detail, need to set out the particulars thereof is not felt.

7. Clause 6 of AFO No.33/2017 titled “GRANT OF NOC FOR CIVIL POST: AIRMEN/NCs (E)”, which is impugned in this petition, is as under:

“EXECUTION

Eligibility Criteria

6. *Airmen/NCs(E) of the IAF are eligible to apply for civil posts/services with prior permission from the Competent Air Force Authority. Airmen/NCs(E) including those on deputation shall be eligible for seeking permission to apply for the following category of posts:-*

Category	Description of Post	Eligibility Criteria	Competent Authority to Issue NOC	Format of NOC
<i>Category-I</i>	<i>Group A/I and Group B/II Gazetted posts through UPSC and State Public Service Commission only. (Recruitment advertisement must clearly mention the Group of the Post)</i>	<i>(a) Airmen with minimum Skill Grade A and seven years of service. (b) NCs(E) irrespective of length of service.</i>	AOC, AFRO	Appendix A
<i>Category-II</i>	<i>Any civil post in Govt/PSU/Private Sector</i>	<i>Airmen in the last year of residual service prior to expiry of their initial Regular Engagement (RE)/Extended RE provided they have submitted unwillingness/denied further extension of service.</i>	AOC/Stn Cdr/CO#	Appendix B

#CO in the AFO refers to CO of an independent Unit.”

8. We, in *Subhash Chand Vs. Union of India* MANU/DE/0794/2020 were concerned with a challenge to Clause 6 aforesaid, to the extent it entitled Airmen with minimum Skill Grade 'A' only to apply for discharge. It was held that the requirement in AFO No.33/2017, of Skill Grade 'A', for eligibility to apply for and obtain NOC for discharge from IAF, was arbitrary and the same was struck down and it was further held that the denial of NOC and/or discharge on the said ground was untenable; accordingly mandamus directing the respondents IAF to discharge the petitioner therein from IAF, was issued. We, again, in *Sonu Vs. Union of India* 2020 SCC OnLine Del 1238 [Review Petition preferred whereagainst was dismissed on 25th September, 2020 vide judgment reported as 2020 SCC OnLine Del 1238], were concerned with the same issue and after considering the arguments of the counsel for the respondents therein, reiterated the earlier decision in *Subhash Chand* supra.

9. Having pronounced on the subject in *Subhash Chand* and in *Sonu* supra, instead of the counsel for the petitioner opening the arguments, the counsel for the respondents IAF was asked to argue first.

10. The counsel for the respondents IAF argued, that (i) the petitioner, when joined the respondents IAF in the year 2008, had undertaken to remain in employment till the year 2028; (ii) the petitioner is assured of promotion till 2027; (iii) there is an acute shortage of Airmen in the respondents IAF; (iv) AFO No.33/2017 permits Airmen (a) to apply for Group A/I and Group B/II Gazetted posts through UPSC and SPSC only, if having the minimum Skill Grade 'A' and 7 years of service; and, (b) to apply for civil post in Government/PSU/Private Sector, in the last year of

residual service prior to their initial regular engagement/extended regular engagement; (iv) the post for which the petitioner has applied, does not fall in the first category and the second category is available only in the last year of engagement and in which also the petitioner does not fall; (v) the petitioner did not apply for NOC for applying for the job so applied; (vi) the petitioner applied only after he had been selected and which was also in violation of the Rules; (vii) the petitioner applied for the subject job in the General Category and not in the Ex-Serviceman Category; (viii) the petitioner, at that time was having Skill Grade 'C' and not Skill Grade 'A'; (ix) the petitioner did not seek discharge on medical ground and has made up a medical ground only in this petition; (x) it is only during the pendency of this petition that the petitioner, vide orders dated 1st October, 2019 and 8th December, 2019 was permitted to apply for discharge on medical ground; (xi) the Low Medical Category of the petitioner does not interfere with the trade of Electric Fitter in which the petitioner has been trained; (xii) the petitioner has wrongly pleaded that he cannot be promoted; (xiii) the alphabet 'P' in the Medical Category, does not indicate that the Medical Category is for life, but only indicates that the same is not to be reviewed every month, but annually; (xiv) the petitioner is eligible to be appointed as a Sergeant in the year 2021; (xv) the policy for discharge on medical ground is different; (xvi) as per Clause 20 of AFO No.33/2017 also, permission to apply for civil post as well as grant of NOC, are privileges and cannot be claimed as a matter of right; and, (xvii) the respondents IAF, while refusing NOC to the petitioner, did not invoke Clause 20, because the petitioner, as per AFO No.33/2017 was not even eligible to apply.

11. Per contra, the counsel for the petitioner argued that (i) the Clause of

AFO No.33/2017, requiring Skill Grade 'A', has already been struck down; (ii) earlier AFOs in this regard did not have any requirement of selection through UPSC or SPSC only; (ii) there is no reason why selection should be through recruitment by UPSC or SPSC; (iii) there is no rationale why the Government only should retain the resource; (iv) the Rural Bank is a PSU and thus denial of NOC is arbitrary; (v) the petitioner is not even being used for the trade for which he is trained; (vi) the petitioner can be promoted only with the clearance of the Condonation Board; (vii) since the petitioner is not working in the trade in which he has been trained, he would not have the requisite experience also for clearance to be granted by the Condonation Board; and, (viii) that an Electrical Fitter has to necessarily work in an environment of fumes and since the petitioner has been medically advised against working in such an environment, he will never work as an Electrical Fitter.

12. The counsel for the respondents IAF, in rejoinder, has argued that (i) the petitioner continues to discharge duties for which he has been trained; (ii) the petitioner has been granted the time scale due to him; (iii) the conduct of the petitioner is fraudulent; (iv) the petitioner has set up a case of having applied for NOC but which is not borne out from the documents, which have been fabricated; and, (v) the petitioner having indulged in fabrication, even otherwise is not allowed to invoke the equitable writ jurisdiction.

13. Though the counsel for the respondents IAF has argued much more extensively than was argued on behalf of IAF in *Subhash Chand* supra and *Sonu* supra but having considered her arguments, we do not find any reason

to differ from the view already taken. It is not as if while pronouncing ***Subhash Chand*** supra and ***Sonu*** supra we were not aware of the factors as have been argued by the counsel for the respondents IAF now, though they may not have been spelt out clearly owing to no specific arguments in that respect having been urged in those cases. Thus the denial of NOC to the petitioner herein, on the ground of not possessing Skill Grade 'A', cannot be sustained.

14. However a larger issue here is, that the selection of the petitioner to Group A Officer (Skill-I, II & III) post in Regional Rural Bank, is not through a recruitment process of UPSC or SPSC but through a recruitment process initiated by the IBPS and which does not find mention in the part (Category I) of Clause 6 of AFO No.33/2017 entitling Airmen with 7 years of service to apply for NOC/discharge, though figures in the part (Category II) of Clause 6 entitling Airmen in the last year of residual service prior to initial regular engagement, to apply for NOC/discharge. The petitioner admittedly is not in the last year of residual service prior to initial regular engagement. In both, ***Subhash Chand*** supra and ***Sonu*** supra, the petitioners had secured employment through the Haryana Public Service Commission and thus the said question did not arise. Thus the benefit of ***Subhash Chand*** and ***Sonu*** supra can be obtained by the petitioner only to the extent the petitioner has been denied discharge on the ground of not possessing Skill Grade 'A' at the time of applying. What falls for adjudication in this petition is, whether the petitioner, after 7 years of service, can be granted discharge when has not secured Group A/I and Group B/II Gazetted post through UPSC and/or SPSC.

15. The petitioner, though in the petition has pleaded the requirement of Skill Grade 'A' to be arbitrary and that the earlier AFOs in this respect did not provide for recruitment to be through UPSC/SPSC only, but has not challenged the requirement in the AFO No.33/2017 of recruitment to Group A/I and Group B/II Gazetted post to be only through UPSC/SPSC, to be arbitrary, save for paying lip service thereto. There is no pleading that IBPS, through which the petitioner has been recruited, is equivalent to UPSC/SPSC or that there is no rationale of the condition of recruitment through UPSC/SPSC to the objective of AFO No.33/2017. In the absence of any specific challenge to the said condition, we are not inclined to strike it down.

16. IBPS is an Autonomous Body set up by Reserve Bank of India (RBI), Central Financial Institutions and Public Sector Banks and does not in any way equate with UPSC/SPSC.

17. We are conscious that in ***Brijlal Kumar Vs. Union of India*** 2020 SCC OnLine Del 1477 pronounced by us recently, we have approved of judgment dated 11th December, 2019 in W.P.(C) No. 5642/2019 titled ***Mohd. Israr Khan Vs. Union of India*** and ***Rakesh Kumar Vs. Union of India*** MANU/DE/0121/2020, all in the context of claim of *pro rata* pension and holding entitlement of *pro rata* pension to be also available to those employed in PSUs and Banks. However merely because it has been so held in the context of *pro rata* pension would not imply that the requirement in the context of discharge from IAF, of securing employment only through UPSC/SPSC also has to be ignored. The considerations for the two are entirely different.

18. As far as the plea in the petition, of the AFOs in force at the time of recruitment of the petitioner and till AFO No.33/2017 not containing any such condition of recruitment to be through UPSC/SPSC only, is concerned, it is not even further pleaded that the petitioner, throughout his employment was to be governed by the AFO in force at the time of recruitment or that the respondents IAF were not entitled to, from time to time change the policy. In the absence of any plea, we are of the view that the respondents IAF, depending upon the exigencies and requirements from time to time, in a matter as that of letting the Airmen go even prior to their initial regular engagement, is entitled to change the policy.

19. We may also notice that even though there is no specific challenge by the petitioner as aforesaid, to the requirement of recruitment through UPSC/SPSC only but the respondents IAF in their counter affidavit have pleaded the rationale therefor and with which, we tend to agree. The respondents IAF having spent considerable amounts on training of Airmen, as pleaded, is fully entitled to restrict discharge before the expiry of their initial regular engagement only if recruited through UPSC/SPSC. It is also not as if while notifying AFO No.33/2017 the authorities concerned were not cautious of the said aspect. As aforesaid while the said condition exists for discharge after 7 years of service, it does not exist for seeking discharge during one year of residual service.

20. As far as the claim of the petitioner for discharge on medical grounds is concerned, according to the respondents IAF, the petitioner is very much medically fit to discharge the duties of his trade and is continuing discharge the said duties and his low medical category is not

coming in the way of the respondents IAF having utility and need for him. Though the petitioner controverts the same, but the respondents IAF are best judge of their needs and requirement and in the face of their categorical stand, no case for discharge of petitioner from service on ground of medical unfitness is made out.

21. The petition thus fails and is dismissed.

RAJIV SAHAI ENDLAW, J.

ASHA MENON, J.

DECEMBER 15, 2020
'pp'

